

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

JUSTIN R. BELISLE, )  
 )  
 Plaintiff, )  
 )  
 v. ) Case No. 08-2087-EFM  
 )  
 BNSF RAILWAY COMPANY, )  
 )  
 Defendant. )

**ORDER**

This case came before the undersigned U.S. Magistrate Judge, James P. O’Hara, on June 22, 2009, for a motion hearing and status conference. This order memorializes the court’s rulings at that hearing and conference.

1. Alternative Dispute Resolution. The parties have informed the court that they believe further ADR would be useful. By agreement of the parties, U.S. Magistrate Judge Donald W. Bostwick will, as set out more fully in a separate order, conduct a settlement conference with the parties and counsel on July 2, 2009, at 10:00 a.m., in Kansas City, Kansas.

2. Defendant’s Motion for a Protective Order. Based on plaintiff’s concessions at the motion hearing, and for the reasons stated on the record at the hearing, the court denies defendant’s motion for a protective order (doc. 249) as moot.

3. Plaintiff's Motion to Amend the Scheduling Order. Without objection by defendant, plaintiff's motion to amend the scheduling order (doc. 253) is granted on the following terms:

a. By no later than July 23, 2009 (i.e., within twenty-one days of the settlement conference), defendant shall produce *all* of the discovery materials it has represented it would produce in its response to the motion to amend (doc. 259).

b. Plaintiff shall then have until August 13, 2009, to take any follow-up depositions that might be necessary based on the newly produced evidence.

c. By August 24, 2009, counsel shall jointly submit their proposed final pretrial order via email to the undersigned's chambers.

d. A final pretrial conference is set for September 4, 2009, at 9:00 a.m. in courtroom 236 before the undersigned U.S. Magistrate Judge.

4. Pending *Daubert* Motions. With regard to plaintiff's motion to exclude the testimony of Dr. Sanders (doc. 266), plaintiff shall have until June 29, 2009, to file an affidavit by Dr. Bakken in further support of the motion. Within fourteen days of the settlement conference (i.e., by July 16, 2009) defendant shall file its responses to all four of plaintiff's recently filed *Daubert* motions (docs. 262, 264, 266, and 268).

5. Resolution of Motions. The currently assigned presiding U.S. District Judge, Hon. Eric F. Melgren, will proceed to rule in due course on defendant's motion in limine (doc. 144), plaintiff's motion for leave to file a surreply with regard to the second motion in limine (doc. 172), defendant's motion for summary judgment (doc. 151), defendant's motion

to bifurcate (doc. 197), and plaintiff's four *Daubert* motions (docs. 262, 264, 266, and 268). The undersigned U.S. Magistrate Judge will handle any non-dispositive motions filed after entry of the instant order.

6. Trial. Per Judge Melgren's directive, the existing August 4, 2009, trial setting is vacated. In the hopefully unlikely event the July 2, 2009 settlement conference is unsuccessful, then upon the resolution of the above-referenced motions by Judge Melgren, or at the pretrial conference scheduled for September 4, 2009, whichever is sooner, the undersigned envisions convening a telephone status conference with counsel in order to reschedule the trial with a special (i.e., No.1) setting. It is anticipated the undersigned U.S. Magistrate Judge will preside over trial with the consent of the parties in return for a special setting. A consent form is being sent to counsel under separate cover. Plaintiff estimates the length of the trial to be three weeks. Defendant estimates the length of the trial to be five weeks.

IT IS SO ORDERED.

Dated this 23rd day of June, 2009, at Kansas City, Kansas.

s/James P. O'Hara  
James P. O'Hara  
U.S. Magistrate Judge